IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1042 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

BADAMIBEN W/O PARSAJI GANESHJI

Versus

STATE OF GUJARAT

Appearance:

MR MJ BUDDHBHATTI for Petitioner

MR. L.R. PUJARI, A P P, for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 02/07/97

ORAL JUDGMENT: (Per: J.M. Panchal, J.)

By means of filing this appeal under Section 374 of the Code of Criminal Procedure, 1973, appellant has challenged legality and validity of the judgment and

order dated December 16, 1988, rendered by the learned Additional City Sessions Judge, 6th Court, Ahmedabad City, in Sessions Case No. 5 of 1988, convicting the appellant under Section 302 of the Indian Penal Code and sentencing her to rigorous imprisonment for life.

Briefly stated the prosecution case is that deceased Lilaben was staying with her husband Chetanbhai and the appellant in a hutment situated at Lalbhai Fakirbhai's Chawl, near Baliakaka Cross Roads, Sukramnagar, Ahmedabad. In the early morning of October 8, 1987, deceased Lilaben received serious burn injuries. She was immediately taken by her husband, Chetanbhai, to Shardaben Hospital Saraspur, Ahmedabad, and was given intensive treatment. The doctor, who was on duty at the emergency room, directed constable Babubhai Panchabhai, who was on duty as constable at the Shardaben Hospital, to collect necessary information about the incident from the person accompanying the injured, and pass on the information to the police station. Therefore, constable Babubhai Panchabhai made inquiries with Chetanbhai and, after recording information given by Chetanbhai in vardhi book, necessary information was conveyed to Gomtipur Police Station. The husband of deceased Lilaben had informed constable Babubhai that the deceased had received burn injuries as she had attempted to commit suicide by pouring kerosene over her body. During the course of treatment, the deceased succumbed to the burn injuries at about 7.30 a.m. Police Sub-Inspector, Rohitkumar D. Baranda, was handed over necessary papers for further investigation and, therefore, he visited Shardaben Hospital at about 7.30 a.m. When he reached the hospital, he learnt that the deceased had succumbed to burn injuries. He, therefore, went to the casualty room where dead body of the deceased was lying. At the casualty room, PSI Baranda did not find Chetanbhai, but found Kantibhai Ganeshbhai, a friend of Chetanbhai, who had also accompanied Chetanbhai to the hospital. PSI Baranda therefore recorded the statement of Kantibhai Ganeshbhai. PSI Baranda held inquest on the dead body in presence of panchas. From the statement given by Kantibhai Ganeshbhai, PSI Baranda felt that the death was accidental. However, at the time of the incident, mother-in-law and sister-in-law of the deceased were also staying with the deceased. Therefore, PSI Baranda informed his superior officers about the incident. During the course of investigation, it was learnt that the deceased was treated by the doctor. On perusal of the medical papers, the investigating officer found an endorsement on the medical papers to the effect that "alleged history of burning by her mother-in-law with

kerosene". In view of this endorsement, Dr. Mayurbhai Mehta, who had made the said endorsement, was interrogated. The doctor stated before the investigating officer that he had noted down the history as stated by the deceased. Dr.Mayurbhai Mehta, thereafter, lodged first information report with the police, and, thus, investigation into the case of murder was set in motion. Dead body of deceased Lilaben was sent for post-mortem examination. Post-mortem on the dead body of deceased Lilaben was performed by Dr. Vinayakrao Patil. Panchnama of place of occurrence as well as panchnama of seizure of the clothes put on by the appellant were also prepared during the course of investigation. Articles seized were sent to the Forensic Science Laboratory for analysis and necessary opinion. After receipt of report from the Forensic Science Laboratory, and on completion of investigation, the appellant was chargesheeted for the offence punishable under Section 302 of the Indian Penal Code in the court of the learned Metropolitan Magistrate, 12th Court, Ahmedabad City. As the offence under Section 302 of Indian Penal Code is triable by a Court of Sessions, the case was committed to Sessions Court for trial where it was numbered as Sessions Case No. 5 of 1988.

The learned Additional City Sessions Judge framed charge at Exh.1 against the appellant under Section 302 of the Indian Penal Code. The charge was read over and explained to the appellant who pleaded not guilty to the charge and claimed to be tried. The prosecution, therefore, examined (1) Rajubhai Dastaram, P.W. 1, Exh.17; (2) Nathusingh Sagrasingh, P.W.2, Exh.18; (3) Rekhaben Rameshbhai Kher, P.W.3, Exh.15; (4) Shantaben Kalaji, P.W.4, Exh.20; (5) Arjun Tolaji, P.W.5, Exh.22; (6) Pankaj Mansukhbhai, P.W. 6, Exh.24; (7) Dr. Vinayakrao Vasudevrao Patil, P.W.7, Exh.26; (8) Dr. Mayur Manuprasad Mehta, P.W. 8, Exh.30; (9) Babubhai Panchabhai, P.W. 9, Exh.34; (10) Rohitkumar H. Baranda,P.W. 10, Exh.36; (11) Govindsinh Raysinhbhai Chavda, P.W. 11, Exh.40, to prove its case against the appellant. The prosecution also produced documentary evidence such as panchnama of place of occurrence, recovery panchanama of seizure of the clothes of the appellant; complaint filed by Dr. Mayur Mehta, post-mortem notes of the deceased, report received from the Forensic Science Laboratory, etc. in support of its case.

After recording of evidence of prosecution witnesses was over, the learned Additional City Sessions Judge recorded the statement of the appellant under

Section 313 of the Code of Criminal Procedure, 1973. In further statement, the appellant denied the case of the prosecution, but did not lead any evidence in her defence.

On appreciation of evidence, the learned Judge held that deceased Lilaben died a homicidal death on October 8, 1987. The learned Judge further concluded that deceased Lilaben had stated history of assault to Dr. Mayur Mehta and made oral dying declarations before Shantaben and Arjunbhai implicating the appellant. In view of these conclusions, the learned Judge convicted the appellant under Section 302 of the Indian Penal Code and imposed sentence on her to which reference is made earlier, giving rise to the present appeal.

Mr. M.J. Buddhbhatti, learned counsel appearing for the appellant, has taken us through the entire evidence on record. It was submitted that the opinion expressed by Mr. M.J. Rathod, Senior Scientific Assistant, Forensic Science Laboratory, indicated that the doors were closed from inside and were broken open from outside, which probablises defence theory that the deceased had committed suicide and is inconsistent with the theory of murder of deceased having been committed by the appellant. The learned counsel for the appellant pleaded that, as the deceased had received extensive burns and was admitted in the hospital in a critical condition, it was not probable that she could have stated the history of assault to the doctor and, therefore, the evidence of Dr.Mayurbhai Mehta should be discarded as unreliable. It was claimed that, as breath of the deceased was rapid and she was gasping for air, it was not possible for her to make any dying declaration before her relatives and, therefore, evidence regarding dying declaration led by the prosecution should be disbelieved. What was highlighted by the learned counsel for the appellant was that the prosecution has led two sets of evidence which contradict each other and, therefore, benefit of doubt deserves to be granted to the appellant.

Mr. L.R. Pujari, learned Additional Public Prosecutor, contended that the evidence of Dr. Mayurbhai Mehta, read with evidence of witness Shantaben and witness Arjunbhai, clearly shows that, after pouring kerosene over the deceased, the appellant had set her ablaze and, therefore, conviction recorded by the learned Judge should be upheld by the Court. The learned Additional Public Prosecutor extensively referred to the evidence of Dr. Patil, who had performed autopsy on the

dead body, and submitted that, as the doctor has given opinion that burn injuries received by the deceased are more consistent with homicidal death than suicidal death, opinion of the Forensic Science Laboratory indicating suicide by the deceased should be ignored and the appeal should be dismissed.

It is an admitted position that no witness is examined by the prosecution as eye-witness nor is anyone cited as an eye-witness. In order to bring home guilt of the appellant, the prosecution has placed strong reliance on (i) history of assault noted down by Dr.Mayur M.Mehta, P.W. 8, Exh.30, on the medical papers which are produced at Exh.31; (ii) oral dying declaration made by the deceased before Shantaben, P.W.4, Exh.20, and (iii) oral dying declaration made by the deceased before Arjunbhai, P.W. 5, Exh.22. Evidence of Dr. Mayurbhai M.Mehta shows that on October 8, 1987, he was discharging duties as Registrar in the Plastic Surgery Department of Shardaben Chimanlal Hospital, Saraspur, Ahmedabad, and Lilaben Chetanbhai was admitted in the casualty ward of the hospital at about 6.30 a.m. The doctor has stated in his deposition that at 6.50 a.m. Lilaben was transferred to his unit and he had found that she was severely burnt. According to the doctor, one of his duties was to ascertain history of incident from the patient and, therefore, he gathered history about the incident from the patient. The doctor has asserted before the court that the deceased had stated before him that she was burnt by her mother-in-law with kerosene. The doctor has claimed in his evidence that, after gathering history about the incident, he recorded the same on the case papers of the hospital. He has produced the medical case papers relating to the deceased at Exh.31. His evidence further shows that at about 1 p.m., his statement was recorded by the police officer and, thereafter, he had lodged complaint with the Police Sub-Inspector, Gomtipur Police Station, in the hospital itself. This witness has been cross-examined at length by the learned defence counsel who appeared for the appellant. During cross examination, the witness stated that, though the patient was put on oxygen, she was conscious and, therefore, he had gathered history from the patient and had noted down the same on the case papers. Even in the cross examination, the witness has asserted that the injured Lilaben was conscious and he had gathered history of the incident from her. Though this witness is searchingly cross examined, nothing has been brought on record to discredit his version. He is neither related to the deceased nor is he on inimical terms with the appellant. The doctor had gathered history about the incident in

most natural manner and during the course of discharge of his duties as such. Having regard to the reliable evidence of Dr. Mayur Mehta, we are of the opinion that the learned Judge has not committed any error in holding that the prosecution has proved that Dr.Mayur Mehta had gathered history of incident from injured Lilaben and had noted down the same on her case papers. Submission that blood pressure of the deceased was 60-40 and pulse was 140 per minute, whereas respiration was rapid and, therefore, the deceased could not have narrated history of incident to the doctor, cannot be accepted. Dr. Mayur Mehta has clearly asserted on oath before the court that deceased Lilaben was conscious enough to narrate the history of incident to him and narration made by her was recorded by him on the medial papers. This court has no reason to disbelieve the evidence of the doctor. Even otherwise, in the case of State of Haryana v. Harpal Singh, reported in AIR 1978 Supreme Court 1530, the Apex Court has held that the fact that the pulse was not palpable and blood pressure unrecordable and the patient was in a gasping condition would not necessarily show that the patient's condition was such that no dying declaration could be recorded.

Evidence of Shantaben Kalaji, PW 4, Exh.20, indicates that she is aunt of deceased Lilaben. This witness has categorically asserted that on receiving news about Lilaben having been admitted in the hospital with burn injuries, she had gone to the hospital together with other relatives and deceased Lilaben had stated before her that she was set on fire by her mother-in-law. This witness is also effectively cross examined on behalf of the appellant. However, nothing has been brought on record of the case which would make her assertion in the examination-in-chief doubtful. It is not even suggested to this witness that she was on inimical terms with the appellant and, therefore, she was out to implicate the appellant falsely in the case.

Similarly, evidence of witness Arjun Tolaji, P/W No. 5 (Exh.22), shows that he is the real brother of deceased Lilaben. This witness has also asserted on oath before the court that, on learning that his sister, Lilaben, was admitted in the hospital with burn injuries, he had rushed to the hospital, and his sister had stated before him that she was set ablaze by her mother-in-law after pouring kerosene. This witness has also stated that the appellant and her son, i.e. husband of the deceased, were not treating the deceased well and, on his persuasion, the deceased had gone to her in-laws house just prior to one and half month of the incident. In the

cross-examination by the defence counsel, the witness has stated that, though his sister had sustained extensive burn injuries, she was able to speak and she had made statement before him referred to in his examination-in-chief. This witness is also searchingly cross-examined on behalf of the appellant, but the defence has failed to elicit anything from him which would discredit his version regarding oral dying declaration made by the deceased to him. On the facts and in the circumstances of the case, we are of the opinion that the learned Judge has rightly concluded that the prosecution proved that the deceased had made oral dying declarations before Shantaben Kalaji, P/W No.4 (Exh.20), and Arjun Tolaji, P/W No.5 (Exh.22), implicating the appellant. The said finding is amply borne out from the record of the case and no ground is made out by the appellant to interfere with the said finding in the present appeal.

As the prosecution has proved history of assault narrated by the deceased and two oral dying declarations, it wold be advantageous to refer to law regarding dying declaration. Law regarding nature, scope and value as piece of evidence of oral and written dying declarations is now fairly crystal clear by judicial decisions. The dying declaration is, undoubtedly, admissible in evidence under Section 32 of the Evidence Act and not being a statement on oath so that its truth could be tested by cross-examination, the Courts have to apply the strictest scrutiny and the closest circumspection to the statement before acting upon it. While great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person, yet the Court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of his imagination. It is well settled that a dying declaration can form the sole basis of conviction provided that it is free from infirmities and satisfies various tests. A dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence. Section 32 of the Evidence Act provides that statements, written or verbal, of relevant facts made by a person, who is dead, are themselves relevant facts when the statement is made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of the person's death comes into question. Such statements are

admitted on the principle of necessity. Not being a testimonial statement made before the court, the declaration is open to discredit in the same way as any other witness. It is well settled that the court must be satisfied that the declaration is truthful. Where the court finds that the declaration is not wholly reliable and material and integral portion of deceased's version of the occurrence is untrue, the court should not rely on it, unless corroborated. The dying declaration is a piece of untested evidence and must, like any other evidence, satisfy the court that what had been stated therein is the unalloyed truth and that it is absolutely safe to act upon it.

In the light of these principles, the history of assault noted down by the doctor on the case papers as well as two oral dying declarations will have to be viewed.

The prosecution has produced certain documents vide Exh.5. Exh.6 is a forwarding note, with which the articles seized during the course of investigation were sent to the Forensic Science Laboratory for analysis. From the contents of the said note, it is evident that two broken wooden planks were also sent to the Forensic Science Laboratory for analysis. While forwarding the note, the Police Inspector, Gomtipur Police Station, Ahmedabad, had also indicated the nature of analysis and requested the Analyst to answer the question as to whether hinges of two wooden planks could have been broken if pressure was applied from outside. The report together with the opinion of Mr. M.J. Rathod, Senior Scientific Assistant, is produced by the prosecution at Exh.12. While forwarding the report, the expert has, in no uncertain terms, opined that, if the door is closed from inside and if pressure is applied from outside towards inside, damage to the hinges is possible. The Senior Scientific Assistant has further mentioned that, if two wooden planks are closed from inside and if equal force is applied on the door from outside, damage to chain and hinges, as found, is possible. In view of the opinion expressed by the expert, there is no manner of doubt that, at the time of the incident in question, the doors were bolted from inside and were broken open from outside. The panchanama of place of occurrence is produced by the prosecution at Exh.41. A bare perusal of the same also establishes that right side plank was attached to hinges whereas left side plank was found affixed to the frame of the door. It is specifically mentioned in the panchanama that in the inner part of left door, there was a chain having two hooks and one of

the hooks had widened. If the contents of the panchnama are viewed in the light of the opinion given by Mr.M.J. Rathod, Senior Scientific Assistant, Forensic Science Laboratory, it becomes evident that doors were closed from inside and not from outside at all. Moment the opinion of the Forensic Science Laboratory is accepted, the theory of homicidal death is ruled out. Though the panchnama of place of occurrence refers to an iron window having size of 1.1/4 feet x 2 feet, its condition is not mentioned in the panchnama at all. The evidence of the investigating officer makes it abundantly clear that he had recorded the statements of several neighbours. However, surprisingly, no neighbour is examined to prove the case of the prosecution against the appellant. It is nobody's case that, after setting the deceased on fire, the appellant had bolted the doors from inside and made her escape good through the window. Nobody is examined to prove that the appellant was seen coming out of the room through the window. Unfortunately, the trial court has completely ignored opinion given by the Forensic Science Laboratory which shows that door was bolted from inside and broken open from outside. In our view, the report of the Forensic Science Laboratory establishes that at the time of the incident the doors were not bolted from outside, but were bolted from inside and the deceased was all alone in the room at the time of incident. There is yet another facet of the case which cannot be ignored. If kerosene had been poured on deceased and she had been set ablaze by the appellant as is the case of the prosecution, at least some resistence would have been offered by the deceased resulting into some injury to the appellant and/or some damage to the clothes put on by the appellant. The panchnama of person of the appellant does not indicate that there were any marks of violence on her person. The clothes worn by the appellant were not found damaged at all nor were smelling of kerosene. The clothes worn by the appellant were seized under a panchnama and sent by investigating officer to Forensic Science Laboratory for analysis. The report of analyst indicates that hydrocarbans of kerosene were present on the clothes of the appellant. This is possible while trying to extinguish fire or removing the injured from the room. This circumstance is rightly not treated by the learned trial judge as a circumstance appearing against the appellant and, therefore, it was not put to the appellant while recording her statement under Section 313 of the Code. However, the fact remains that the appellant had neither received any injury nor her clothes were damaged in any manner, nor the clothes were smelling of kerosene. Over and above the report of the Forensic Science Laboratory, which indicates that the

doors of the room were closed from outside, the evidence on the record suggests that the husband of the deceased had conveyed to the police constable on duty at Shardaben Hospital that the deceased had committed suicide by pouring kerosene. The information received from the husband of the deceased and noted down by the constable Babubhai is produced by the prosecution at Exh.35. It is relevant to note that the husband of the deceased is not prosecuted at all with reference to the incident in question. Nor he is examined as one of the prosecution witnesses. Evidence of the investigating officer, Mr. Baranda, makes it abundantly clear that he had recorded statement of Kantibhai Ganeshbhai who had accompanied the husband of the deceased to the hospital and, in the statement, Kantibhai had sated that the deceased had received burn injuries accidentally. In the light of the statement of Kantibhai, initially, case of accidental death was registered and investigated. Thus, the prosecution has led two sets of evidence before the court. One set consisting of history of assault recorded by Dr. Mayurbhai Mehta as well as two dying declarations alleged to have been made before witnesses Shantaben and Arjunbhai shows that death of the deceased was homicidal, whereas other set of evidence consisting of report of the Forensic Science Laboratory, entry made by police constable Babubhai and produced at Exh.35, as well as statement of Kantibhai Ganeshbhai, which is referred to by Mr. Baranda in his substantive evidence, indicates that death of the deceased was either accidental or suicidal. In view of second set of evidence led by prosecution, we are not satisfied that what had been stated by the deceased to the doctor and two witnesses was the unalloyed truth. We do not consider declaration made by the deceased to the doctor and two witnesses as absolutely safe to act upon. It is well settled law that in a case where the prosecution leads two sets of evidence, each of which contradicts the other, it is difficult to found conviction of the accused. In the case of Harchand Singh vs. State of Haryana, reported in AIR 1974 Supreme Court 344, two accused were arraigned in the assult on the deceased as a result of which the latter had died. The prosecution in support of its case had examined two sets of eye-witnesses. The evidence of one set consisted of the testimony of three eye-witnesses who were not present at the time of the occurrence according to the fourth eye-witness who according to the prosecution case was with the deceased at the time of the assault. This fourth eye-witness was also shown to be an unreliable witness by the other evidence produced by the prosecution. While setting aside the conviction, the Apex Court held as under:

"10. x x x x x It would thus appear that the ey-witness upon whose testimony the prosecution wants to sustain the conviction of the appellants is shown to be an unreliable witness by the other evidence produced by the prosecution. The present is a case wherein one set of prosecution evidence condemns the other set of evidence produced by the prosecution. In the above state of affairs, we find it difficult to secure a firm ground upon which to base the conviction of the accused appellants.

11. The function of the Court in a criminal trial is to find whether the person arraigned before it as the accused is guilty of the offence with which he is charged. For this purpose the court scans the material on record to find whether there is any reliable and trustworthy evidence upon the basis of which it is possible to found the conviction of the accused and to hold that he is guilty of the offence with which he is charged. If in a case the prosecution leads two sets of evidence, each one of which contradicts and strikes at the other and shows it to be unreliable, the result would necessarily be that the court would be left with no reliable and trustworthy evidence upon which the conviction of the accused might be based. Inevitably, the accused would have the benefit of such a situation."

In Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 Supreme Court 1622, the appellant was convicted for murdering his wife Manju by administering her a strong dose of potassium cyanide. The Apex Court on reappreciation of evidence found that two possibilities were available or open, one of which showed that the appellant had administered poison whereas the other indicated that deceased herself had committed suicide. While setting aside conviction, the Supreme Court has ruled that where on the evidence two possibilities are available or open, one of which goes in favour of the prosecution and the other which benefits the accused, the accused is undoubtedly entitled to the benefit of doubt. In paragraph 162 of the judgment, it is held as under:

"162. We then pass on to another important

point which seems to have been completely missed by the High Court. It is well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. In Kali Ram v. State of Himachal Pradesh, (1973) 2 SCC 808 : (AIR 1973 SC 2773 at p.2782), this court made the following observations:

"Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence."

whereas in paragraph 175 of the judgment, it observed as follows:

"175. This now brings us to the fag end of our judgment. After a detailed discussion of the evidence, the circumstances of the case and interpretation of the decisions of this Court the legal and factual position may be summarised thus:
(1) x x x
(2) That, at any rate, the evidence clearly shows that two views are possible - one pointing to the guilt of the accused and the other leading to his innocence. It may be very likely that the appellant may have administered the poison (potassium cyanide) to Manju but at the same time a fair possibility that she herself committed suicide cannot be safely excluded or eliminated. Hence, on this ground alone the appellant is entitled to the benefit of doubt resulting in his acquittal."

Circumstantial evidence of telling nature produced by the prosecution clearly shows that the door of the room was closed from inside and it was broken open from outside by applying force. It would not be out of place to mention that this is the evidence led by the prosecution. The prosecution relies upon the said evidence. Pursuant to certain querries raised by the the Investigating Officer, the expert has given opinion. In fact, the prosecution wants the court to believe the said evidence. If the same is believed, it would destroy the trustworthiness of history of assault

narrated by the deceased to the doctor as well as the dying declarations made by the deceased before the two witnesses. There is no reason, worth the name, to doubt the contents of the Forensic Science Laboratory report which is produced by the prosecution during the trial. Dr. V.V.Patil, who had performed the post-mortem, has also stated in his evidence that the death can be either suicidal or homicidal. Though Dr. Patil has opined that looking to the extensive burns and severity of burns, there are symptoms more in favour of homicidal death than suicidal death, this statement cannot be considered as conclusive opinion given by him. There is no definite conclusive opinion given by any of the doctors that the burn injuries were homicidal in nature only and could not have been suicidal at all. In fact, suicidal death is neither conclusively nor definitely ruled out at all. Even Dr. Mayurbhai Mehta, P.W. 8, Exh.30, was also not able to give definite opinion as to whether the burns were homicidal or suicidal in nature and this is quite evident from the following statement made by him.

> "It is correct that, by the burns received by the patient, and seen by us, we cannot say whether they were homicidal or suicidal in nature."

It means that the witness, who is an expert, and who had an occasion to treat the deceased, has also not given positive, definite and conclusive opinion that the burn injuries were only homicidal in nature. The prosecution has not sought any opinion of this witness in examination-in-chief that the injuries were not suicidal and were only homicidal in nature. As noted earlier, non-examination of material witnesses, i.e. neighbours whose statements were recorded by the investigating officer cannot be undermined at all. No explanation worth the name is given as to why the neighbours whose statements were recorded during the course of investigation were not examined as witnesses in spite of an application having been submitted by the defence. In the light of evidence led by the prosecution, there is no manner of doubt that two sets of evidence are led by the prosecution and as two sets of evidence produced by the prosecution contradict each other, we are of the opinion that benefit of reasonable doubt should go to the appellant, and the appeal deserves to be allowed.

For the foregoing reasons, the appeal succeeds. The judgment and order dated December 16, 1988, rendered by the learned Additional City Sessions Judge, 6th Court, Ahmedabad City, in Sessions Case No. 5 of 1988, convicting the appellant of the offences punishable under

Section 302 of the Indian Penal Code, and the sentence imposed for the said offence on the appellant, are hereby set aside and quashed. The appellant is acquitted of the charges levelled against her. The respondent is directed to release the appellant immediately unless her presence is required in any other case. Muddamal is ordered to be disposed of as per the directions given by the learned Judge in the impugned judgment.

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(swamy)